

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
GASPAR AVENDAÑO HERNANDEZ,
:

Plaintiff,
:

-v-
:

THOMAS DECKER, *in his official capacity as District
Director of New York, Immigration and Customs
Enforcement*; CHAD WOLF, *in his official capacity as
Acting Secretary of Homeland Security*; and WILLIAM
BARR, *in his official capacity as Attorney General*,
:

Defendants.
:
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20 Civ. 1589 (JPO)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court, sitting in Part I, received this afternoon an application by petitioner Gaspar Avendaño Hernandez asking the Court to issue an order to show cause pursuant to 28 U.S.C. § 2243. The proposed order to show cause would put in place an emergency schedule for briefing two issues: (1) whether petitioner should be produced to testify at a New York City Council hearing scheduled for February 28, 2020; and (2) whether a writ of habeas corpus should be granted.

On consideration of petitioner's application and the supporting materials, the Court orders as follows:

1. The Court declines to order emergency briefing on petitioner's application to be released from the custody of Immigration and Customs Enforcement (ICE) to enable him to testify before the New York City Council this Friday. Petitioner is unlikely to succeed on his claim that ICE's failure to produce him for this purpose this Friday would infringe upon his

constitutional rights. This order is without prejudice to petitioner's right, on a more orderly schedule, to pursue his release for the purpose of giving testimony. It is also without prejudice to the right of the New York City Council, which is not a party to this lawsuit, to pursue any and all avenues available to it to secure petitioner's testimony at a future time.


2. The Court will, however, stay petitioner's deportation from the United States until March 28, 2020, to enable orderly litigation on his petition for habeas corpus, because the petition appears to raise colorable questions and because petitioner's deportation in advance of the adjudication of that petition would irreparably harm him. Respondents are enjoined from deporting petitioner prior to that date.

3. To assure orderly briefing on the petition for a writ of habeas corpus, the Court sets the following schedule:

- a. Petitioner shall file a memorandum of law in support of the petition for a writ of habeas corpus by March 6, 2020.
- b. Respondents shall file a response by March 16, 2020.
- c. Petitioner shall file a reply by March 20, 2020.
- d. A hearing shall be held on March 25, 2020, at 2:30 p.m., before the Hon. J. Paul Oetken, to whom this case is assigned. The hearing shall be held in courtroom 706 at the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, N.Y. 10007.

4. Service of this Order shall be effected by petitioner on the United States Attorney for the Southern District of New York by 10 a.m. on Wednesday, February 26, 2020, and shall constitute good and sufficient service.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: February 25, 2020
New York, New York